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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/661,157	09/11/2003	Mitchell S. Owens	8022-A-1	6781

7590 11/01/2007  
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EXAMINER
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SCHNEIDER, CRAIG M

ART UNIT	PAPER NUMBER
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3753

MAIL DATE	DELIVERY MODE
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11/01/2007

PAPER

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**BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES**

Application Number: 10/661,157  
Filing Date: September 11, 2003  
Appellant(s): OWENS ET AL.

**MAILED**  
**NOV 01 2007**  
**Group 3700**

Jordan Meschkow  
For Appellant

**EXAMINER'S ANSWER**

This is in response to the appeal brief filed 2/21/07 appealing from the Office action  
mailed 6/14/06.

**(1) Real Party in Interest**

A statement identifying by name the real party in interest is contained in the brief.

**(2) Related Appeals and Interferences**

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

**(3) Status of Claims**

The statement of the status of claims contained in the brief is correct.

**(4) Status of Amendments After Final**

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

**(5) Summary of Claimed Subject Matter**

The summary of claimed subject matter contained in the brief is correct.

**(6) Grounds of Rejection to be Reviewed on Appeal**

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct. The appellant is not arguing the 103(a) rejection of Davenport in view of Guardshack for claims 8-11 and the 103(a) rejection of Davenport/Guardshack in view of Clements et al. for claims 12 and 13, as pointed out in the appeal brief filed on 5/29/07 on page 1, first sentence of the third paragraph "In this third....reviewed on Appeal."

**(7) Claims Appendix**

The copy of the appealed claims contained in the Appendix to the brief is correct.

**(8) Evidence Relied Upon**

4,890,638	DAVENPORT	1-1990
6,203,591	CLEMENTS ET AL.	3-2001

GuardShack Product Line Brochure Backflow Prevention Device InnClosures (2000)

**(9) Grounds of Rejection**

The following ground(s) of rejection are applicable to the appealed claims:

Claim 1 stands rejected under 35 U.S.C. 102(b) as being anticipated by Davenport (4,890,638).

Davenport discloses a security enclosure (90) for a control apparatus (11), the enclosure comprising a base (22), a cage (91, 92, 93, 94, and 95) configured to connect to the base and encompass the apparatus, a mounting member comprising a mounting shank (the middle 112 that is located under where 114 is located in Figure 9) embedded within the base and a mounting strap [106 and the area of 108 that extends from 106 including the left hand side 112 (directly under the 108 in Figure 9) and to the where the mounting shank connects with 108] partially embedded (the 112 located under 108) within the base and joined to the mounting shank (area of 108 attached to the shank) and configured to extend inside the cage substantially perpendicular to the base when the cage is connected to the base and a lock device (115) configured to secure the cage to the mounting strap when the cage is connected to the base (col. 5, line 56 onto col. 6, line 58).

**(10) Response to Argument**

The appellant is arguing that the office action makes three erroneous assertions which are that the examiner incorrectly calls an anchor hook a mounting strap and a mounting shank, the anchor hooks would not be mistaken as a mounting shank, and that the bolt 115 is not a lock device.

The first point is that appellant misreads the rejection to state that the same anchor hook is read to be both a mounting shank and a mounting strap. The examiner is utilizing part of the device to anticipate the language of the claim, therefore the assumption that the entire frame is the mounting strap is an incorrect assumption that was made by the appellant. The mounting strap is pointed out again above and clarified further. The appellant is further arguing that nowhere in the Figures 10-12 is it shown that frame 105 is embedded in the concrete. This statement is incorrect as disclosed by Davenport (col. 6, lines 40-44) and shown in Figures 10-12. The examiner is utilizing the anchor member 112 located on the left side of 108 under where 108 is pointing in Figure 9 to be part of the mounting strap. This anchor 112 would anticipate the claim language of a partially imbedded mounting strap since the anchor 112 is imbedded in the base (col. 6, lines 21-26) and further is part of the frame since the Davenport teaches of pre-welding the anchor hooks to the frame and then embedding them into the base. The appellant is further arguing that the examiner can not utilize the anchor hooks to be both the mounting strap and the mounting shank. This is why the examiner has clearly indicated that the different anchor hooks are being used for the mounting strap and the mounting shank. The appellant is further pointing out the distinction between the mounting strap and mounting hook as depicted in Appellant's Figure 5.

The examiner asserts that what the appellant is calling a mounting strap (36) and a mounting shank (38) is actually one piece (40) as shown in Appellant's Figure 5, this is similar to what the examiner is doing with the Davenport reference.

The second erroneous assertion made by the examiner as argued by the appellant is that the anchor hook that is identified in the rejection can be a mounting shank. The appellant is arguing that their mounting shank is not a fastener and is embedded in the base. The examiner disagrees with this statement that the appellant made and points out that the whole purpose of the invention is to make sure that the valve assembly inside can not be vandalized and that the shank of the appellant's invention does in fact ensure that the shank fastens the mounting straps in a more secure manner to the base. Davenport does in fact do exactly the same functionally as the appellant's mounting shank in that it secures the mounting straps to the base. The appellant argues that the anchor hooks of Davenport are only partially embedded in the base. The examiner would like to direct the appellant to Figures 10-12, which clearly depict that the anchor hooks are completely embedded in the base. Therefore the anchor hook that is being used as the mounting shank in the rejection is embedded in the base and therefore anticipates the claim. The appellant is further arguing that the anchor hooks of Davenport would not be mistaken by one with ordinary skill in the art for mounting straps and mounting hooks. The examiner disagrees with this and would like to point out the fact that the appellant continues to define the mounting straps and mounting hooks in subsequent claims, which the appellant does. If one of ordinary skill in the art would not mistake the anchor hooks of Davenport for mounting straps and

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mounting hooks as stated in claim 1 then the appellant should not have to define them in further claims. The appellant is arguing that the anchor hooks of Davenport are disclosed in appellant's disclosure as being a weakness in anchoring the enclosure. The anchors that appellant is pointing out are lag bolt anchors and not the anchor hooks of Davenport. Any enclosure can be compromised if wanted and this is not claimed subject matter that the appellant is arguing.

The appellant is arguing that the third erroneous assertion is that the lock device (115) of Davenport is not equivalent to the lock device of appellant's disclosure and would be mistaken for it. The examiner points out that the bolts (115) of Davenport hold the enclosure on the mounting frame therefore the bolts lock the device onto the frame as claimed. The appellant is reminded that the disclosure can not be read into the claim and if the term lock device is as explicit as appellant is arguing then the appellant should not have to define the lock device in further claims, which the appellant does. The appellant is further arguing that they can be their own lexicographer. The examiner would like to point out that the wording of MPEP 2173.01 states "They can define in the claims what they regard as their invention essentially in whatever terms they choose so long as any special meaning assigned to a term is clearly set forth in the specification". This means that "lock device" can be defined in the claim, which it is not, or in the specification, which it is not. An explicit definition must be stated in the specification not just names put to a piece of hardware. If one of ordinary skill in the art could define the lock device as a bolt locking the cover onto the base then the claim is

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anticipated, which is the position that the examiner has taken since one cannot simply pull the cover off without removing (unlocking) the bolt.

**(11) Related Proceeding(s) Appendix**

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

Craig Schneider



Conferees:

Eric Keasel 

Kevin Shaver 